

§ 655.800

and other employees in the occupational classification shall be retained at the employer's principal place of business in the U.S. or at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if an enforcement action is commenced, all payroll records shall be retained until the enforcement proceeding is completed through the procedures set forth in subpart I of this part.

(Approved by the Office of Management and Budget under control number 1205-0310)

[59 FR 65659, 65676, Dec. 20, 1994, as amended at 60 FR 4029, Jan. 19, 1995; 65 FR 80232, Dec. 20, 2000]

Subpart I—Enforcement of H-1B Labor Condition Applications

SOURCE: 59 FR 65672, 65676, Dec. 20, 1994, unless otherwise noted.

§ 655.800 Who will enforce the LCAs and how will they be enforced?

(a) *Authority of Administrator.* Except as provided in § 655.807, the Administrator shall perform all the Secretary's investigative and enforcement functions under section 212(n) of the INA (8 U.S.C. 1182(n)) and this subpart I and subpart H of this part.

(b) *Conduct of investigations.* The Administrator, either pursuant to a complaint or otherwise, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) *Employer cooperation/availability of records.* An employer shall at all times cooperate in administrative and enforcement proceedings. An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 212(n) of the INA and/or this subpart I or subpart H of this part shall

20 CFR Ch. V (4-1-01 Edition)

interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(n) or this subpart I or subpart H of this part. Any such interference shall be a violation of the labor condition application and this subpart I and subpart H of this part, and the Administrator may take such further actions as the Administrator considers appropriate. (Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) *Confidentiality.* The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under this subpart I or subpart H of this part.

[65 FR 80233, Dec. 20, 2000]

§ 655.801 What protection do employees have from retaliation?

(a) No employer subject to this subpart I or subpart H of this part shall intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against an employee (which term includes a former employee or an applicant for employment) because the employee has—

(1) Disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 212(n) of the INA or any regulation relating to section 212(n), including this subpart I and subpart H of this part and any pertinent regulations of INS or the Department of Justice; or

(2) Cooperated or sought to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 212(n) of the INA or any regulation relating to section 212(n).

(b) It shall be a violation of this section for any employer to engage in the conduct described in paragraph (a) of this section. Such conduct shall be subject to the penalties prescribed by section 212(n)(2)(C)(ii) of the INA and § 655.810(b)(2), *i.e.*, a fine of up to \$5,000, disqualification from filing petitions